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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,959	01/30/2002	Donald L. Brodigan	20366-058010	3909

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EXAMINER

DESIR, JEAN WICEL

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 07/17/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/062,959

Applicant(s)

BRODIGAN, DONALD L.

Examiner

Jean W. Désir

Art Unit

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,380,971.

Claim 1:

the claimed "a system for testing a performance capability of a user drop in a communication network" in claim 1 equates to the same in patented claim 1 col. 6 lines 5-7;

the claimed "a host terminal coupled to the user drop via the communication network, wherein the host terminal is operable to: provide a test signal to the user drop, and authorize access to the test signal, wherein authorizing access to the test signal is

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based at least in part upon receiving a network sign-on identifier via the user drop" in claim 1 equates to the same in patented claim 1 col. 6 lines 8-23, the network entitlement controller, network video signal test source, and network data signal test source, in patented claim 1, play the role of the host terminal as claimed in claim 1 of the instant application.

Thus, Allowance of claim 1 of the instant application would result in an unjustified timewise extension of the monopoly defined by the patented claims.

Claims 2-5 are disclosed, see the patented claim 1 col. 6 lines 8-25.

Claim 6:

"coupling a test signal to the user drop, wherein the test device comprises a sign-on identifier that identifies the test device", see col. 6 lines 14-16;

"receiving a test signal at the test device, wherein the test signal is received at least in part based on the sign-on identifier", see col. 6 lines 20-23, 14-16;

"measuring the test signal to determine the performance capability the user drop", see col. 6 lines 5-6, 24-26, 45-46, 48-50, 56-57, 59-61.

Thus, Allowance of claim 6 of the instant application would result in an unjustified timewise extension of the monopoly defined by the patented claims.

Claim 7:

"a method for implementing performance capability testing of a user drop in a communication network" in claim 7 equates to the same in patented claim 1 col. 6 lines 5-7;

“providing access at the user drop to a test signal from a central office; receiving a network sign-on identifier at the central office, wherein the network sign-on identifier identifies a test device; and authorizing access to the test signal by the test device” in claim 7 equates to the same in patented claim 1 col. 6 lines 14-23, the network entitlement controller, network video signal test source, and network data signal test source, in patented claim 1, play the role of the central office as claimed in claim 7 of the instant application.

Thus, Allowance of claim 7 of the instant application would result in an unjustified timewise extension of the monopoly defined by the patented claims.

Claims 8, 9 are disclosed, see col. 6 lines 8-13, 30-34.

Claims 10, 11 are disclosed, see col. 6 lines 8-13, 30-34, 38-46.

Claim 12 is rejected for the same reasons as claims 6.

Claims 13, 14 are disclosed, see col. 6 lines 24-26, 38-41.

Claims 15, 16 are disclosed, see col. 6 lines 14-23.

Claim 17 is disclosed, see col. 6 lines 8-13.

Claim 18 is disclosed, see col. 6 lines 8-13, 24-26, 47-50, 54-57.

Claim 19 is disclosed, see col. 6 lines 5-7.

Claim 20:

“a test device; wherein the test device comprises a user drop, at least one input/output port, and is configured to test the performance capability of the user drop”, col. 6 lines 14-16, 24-26, 5-7, 35-37;

'wherein the user drop port is configured for receiving information via the user drop; and wherein the input/output port is configured to provide access to the test device via and external input/output device", col. 6 lines 14-16, 35-50.

Thus, Allowance of claim 20 of the instant application would result in an unjustified timewise extension of the monopoly defined by the patented claims.

Claim 21 is disclosed, see col. 6 lines 27-29.

Claim 22 is disclosed, see col. 6 lines 35-41.

Claim 23 is disclosed, see col. 6 lines 35-37, 42-50.

Claims 24-26 are disclosed, see col. 6 lines 35-50.

Allowable Subject Matter

3. Claim 1 is disclosed, see col. 6 lines 14-16, 35-50.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Jean W. Désir** whose telephone number is (703) 308-9571.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **John W. Miller**, can be reached at (703) 305-4795.

5. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

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Washington, D.C. 20231

or faxed to:

(703) 872-9314 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

6. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

JWD
7-11-03


MICHAEL H. LEE
PRIMARY EXAMINER